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2003 Western Avenue, Suite 400
Seattle, Washington 98121
(206) 587-0144 • fax (206) 587-0277

JUDGE: Philip H. Brandt
DATE: October 28, 2008
TIME: n/a
CHAPTER: 11
LOCATION: Seattle
RESPONSE DATE: October 20, 2008

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE**

In re:)	Lead Case No. 08-15826
)	(Administratively Consolidated
LITTLE BOAT, LLC,)	With Case No. 08-15825)
)	
Debtor.)	
)	
In re:)	
)	
REDMOND 74, INC.,)	
)	
Debtor.)	
)	
URBAN INNOVATIONS, LLC, et al.,)	ADVERSARY NO. 08-01224
)	
Plaintiffs,)	
)	
vs.)	
)	DECLARATION OF JERRY N.
RAINIER CAPITAL GROUP, LLC, a)	STEHLIK SUPPORTING
Washington limited liability company,)	PLAINTIFFS' OPPOSITION TO
)	DEFENDANT'S MOTION TO
Defendant.)	WITHDRAW REFERENCE
)	

1. My name is Jerry N. Stehlik. I am a partner in the firm of Bucknell Stehlik Sato & Stubner, LLP, located in Seattle, Washington. My firm is counsel for the plaintiffs in this adversary proceeding. I provide this declaration to demonstrate to the court the extent and subject matter of

Declaration of Jerry N. Stehlik - 1

BUCKNELL STEHLIK SATO & STUBNER, LLP
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1 discovery and other related matters that have been occurring in the underlying Chapter 11 case
 2 involving the plaintiffs and the defendant in this adversary proceeding, who are the debtors and
 3 subordinated secured creditor, respectively, in the Chapter 11 case.

4 2. The defendant in this case has conducted extensive discovery in the related Chapter
 5 11 case. Ostensibly, this discovery is related to two contested motions that the debtors had filed in
 6 the bankruptcy case, one is the debtors' motion for post-petition financing, and the other is a motion
 7 by the debtor Redmond 74, Inc. to approve a sale of property free and clear of liens to Velo
 8 Redmond, LLC. On September 30, 2008 defendant served an extensive set of interrogatories and
 9 requests for production on the debtors. The defendant also subpoenaed financial and lending records
 10 from the debtor. The debtor produced over 35,000 pages in response to these discovery requests.
 11 On October 14, 2008, defendant took the deposition of two witnesses, one was Daryl Stromswold, a
 12 financial officer for the debtors, and the other was Robert Pascal, a vice president of HomeStreet
 13 Bank. Again, HomeStreet Bank is the primary secured lender to the debtors and the lender which is
 14 providing post-petition financing to the debtors. Referenced deposition pages are attached and
 15 incorporated herein.
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19 3. The deposition of Mr. Stromswold generated a transcript of 147 pages. The topics
 20 covered in that deposition included: the relationship between Redmond 74 and Brian Housley, a
 21 principal in Velo Redmond, LLC, the contract purchaser of the 19 lots or "units" to which defendant
 22 has objected (Stromswold Dep. at P. 98-101), a description of the documents produced by the
 23 debtors consisting of all documents related to negotiations with the bank (HomeStreet) and all other
 24 lenders they have talked to and private investors from 2007 through the present, consisting of over
 25
 26

1 35,000 pages of documents (Stromswold Dep. at p.29 and 141); questions relating to the debtors
 2 relationship with HomeStreet Bank, and in particular whether or not the debtors were ever in default
 3 with HomeStreet Bank (Stromswold Dep. at p.51); discussion of counsel as to the appropriate scope
 4 of the deposition as between Chapter 11 and adversary issues wherein counsel for the defendant
 5 stated: "I'll tell you what, there is a little overlap, no denying it." (Stromswold Dep. at p.62); the
 6 position taken by the defendant in opposition to the proposed sale of lots by Redmond 74, Inc.
 7 (Stromswold Dep. at p.90, 106 and 126); and a discussion of the proposed sale to Velo Redmond,
 9 LLC (Stromswold Dep. at p.116). As discussed in plaintiffs' Opposition Memorandum, defendant's
 10 refusal to release its lien rights to allow the sale of lots by Redmond 74, Inc. to Velo Redmond, LLC
 11 is directly at issue in this adversary proceeding. The defendant has characterized this proposed sale
 12 as a "sham" both in its motion and in the Answer and Counterclaims filed in this adversary
 13 proceeding. Unquestionably, the defendant attempted to and succeeded in conducting discovery on
 14 this issue in the course of the Stromswold deposition.
 15

16 4. The Robert Pascal deposition generated a transcript of 94 pages. This deposition
 17 extensively explored the lending relationship by and between the debtors and HomeStreet Bank and
 18 in a number of places touched on issues in the adversary proceeding. For example, Mr. Pascal
 19 discussed the structure of the financing that was put in place to facilitate the sale of Redmond 74,
 20 Inc. property which was thwarted by defendant's refusal to release its lien (Pascal Dep. at p.65 and
 21 66). He also discussed the need of Redmond 74, Inc. to file a bankruptcy proceeding to force
 22 defendant to subordinate its lien position to permit construction financing to Little Boat by
 23 HomeStreet Bank (Pascal Dep. at p.75). Mr. Pascal also addressed whether the debtors were in
 24
 25
 26

1 default in loans with HomeStreet Bank and whether HomeStreet Bank declared a default (Pascal
2 Dep. at p.11). The subject matter covered in Mr. Pascal's deposition relates to several issues in this
3 adversary proceeding, including the plaintiffs' claims that the defendant wrongfully refused to
4 subordinate its lien position to allow the sale of Redmond 74, Inc. lots and defendant's justification
5 for doing so based upon the alleged default by the plaintiffs under the HomeStreet Bank loans.
6 Defendant alleges in paragraph 3.6 of its counterclaim that "The Rainier Acquisition Financing
7 provided that a default under HomeStreet's A&D Loan was also a default on the Rainier Acquisition
8 Financing", and later in paragraph 3.20 asserted that this "default" justified its refusal to subordinate
9 to proposed construction loans by HomeStreet Bank to Little Boat. Here again, by conducting dis-
10 covery for the ostensible purpose of opposing debtors' motion to approve post-petition financing in
11 the Chapter 11 case defendant has waded into issues in this adversary proceeding.

14 5. In addition to requesting and seeking documents from the debtors, the defendant also
15 subpoenaed records from HomeStreet Bank. That subpoena sought "complete copies of all loan
16 write-ups, collateral analysis, correspondence and internal memoranda, regarding any loan made by
17 HomeStreet Bank to, or requested by: Little Boat North, Inc., Redmond 74, Inc., Robert Baldwin,
18 Garth Schlemlein, Mark Dean, Will Fernyhough, or any business entity owned or controlled by any
19 of those persons." Here again, the lending relationship between the plaintiffs, the defendant and
20 HomeStreet Bank are deeply intertwined and the issues upon which the defendants have already
21 conducted substantial discovery in the bankruptcy case also touch upon directly and indirectly a
22 number of the issues in this adversary proceeding.

25 //

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27
28 Declaration of Jerry N. Stehlik - 4

BUCKNELL STEHLIK SATO & STUBNER, LLP
2003 Western Avenue, Suite 400
Seattle, Washington 98121
(206) 587-0144 • fax (206) 587-0277

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 20th day of October, 2008.

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28 Jerry N. Stehlik

Daryl L. Stromswold

Page 1

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re)
)
LITTLE BOAT NORTH, INC.)
7525 SE 24th STREET, #650)
MERCER ISLAND, WA 98040,) Lead Case No. 08-15826
Tax ID 20-3046005,)
) (Administratively
Debtor.) Consolidated with
) Case No. 08-15825)
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In re)
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REDMOND 74, INC.)
7525 SE 24TH STREET, #650)
MERCER ISLAND, WA 98040,)
Tax ID 20-5820789,)
)
Debtor.)

DEPOSITION UPON ORAL EXAMINATION

OF

DARYL L. STROMSWOLD

Taken at 1201 Third Avenue

Seattle, Washington

DATE TAKEN: OCTOBER 14, 2008
REPORTED BY: SHERRILYN SMITH, CCR# 2097

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Daryl L. Stromswold

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1 Q And, in fact, there were a series of
2 applications made in 2008, right?

3 A There's a series of ongoing negotiations with
4 the bank, yes.

5 Q And also a series of ongoing negotiations
6 with potential replacement subordinate capital for
7 Redmond 74, right?

8 A Yes.

9 Q Were all of those documents produced as part
10 of the bankruptcy filing, to your knowledge, or just
11 the ultimate last set?

12 MR. KORNFIELD: I'm going to object.
13 When you say "bankruptcy filing," ambiguous. Are we
14 talking about things filed in the bankruptcy court?
15 Are we talking about the documents that we produced
16 to you last night?

17 MR. WEATHERHEAD: I guess I don't know.
18 I'll ask that question, too.

19 MR. KORNFIELD: More for clarity than
20 anything else.

21 A To the best of my knowledge, all the
22 documents we produced to you last night include all
23 the negotiations with the bank and the subordinated
24 debt with lenders we've talked to, the private
25 investors, from late 2007 through now.

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1 Go ahead.

2 Q Did you have any idea why HomeStreet Bank was
3 asking you for that?

4 A It's not unusual for us to give them
5 corporate cash flows or discuss our corporate cash
6 flows with the bank.

7 Q And HomeStreet Bank is a lender to --

8 A Yes.

9 Q To whom?

10 A HomeStreet Bank is a lender to Little Boat
11 North, Redmond 74, TDC, Falling Water, 305 Lakeside
12 and the founders. That's all that comes to mind, off
13 the top of my head.

14 Q And was it your understanding that the
15 request you received from Mr. Pascal for information
16 was in connection with those loans?

17 A It's in relationship with the ongoing
18 relationship with the bank, yes.

19 Q Are any of the loans that you just identified
20 in default, to your knowledge?

21 A I have not received any notices of default.

22 Q I guess my question is: Are any of them in
23 default, whether or not you have been notified of a
24 default by the bank, to your knowledge?

25 MR. KORNFELD: Object to the extent it

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1 for the 2007 return, did you have to change any of
2 the assumptions about allocation of cost and overhead
3 to the Bennett sale?

4 A We reviewed the cost and assumptions and
5 estimates in making the final determinations --
6 profit for the year, yes.

7 Q And how did you change them as a consequence
8 of that review?

9 MR. KORNFIELD: I'm going to object to
10 this line of questioning. I've given you a fair
11 amount of room, but we do have an adversarial
12 proceeding filed. The law is pretty clear that this
13 particular discovery mechanism is not appropriate. I
14 think you are leading into the adversary proceeding.
15 I'm going to ask you to move on.

16 MR. WEATHERHEAD: I'll tell you what,
17 there's a little overlap, no denying it.

18 MR. KORNFIELD: Yeah.

19 MR. WEATHERHEAD: However, you have
20 made some representations about the value of this
21 project and the profitability of the project is
22 intrinsic to that value representation that you have
23 made. I think I am entitled to inquire whether
24 profit previously taken has now been reallocated to
25 try to thrust it forward to enhance the value of the

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1 products that were in development when this started
2 and they have had to come off their price points to
3 recover their bases.

4 Q All right.

5 And what efforts have you made to sell
6 product at Redmond 74 or Little Boat North to test
7 whether that hypothesis holds true; that the land
8 would stay stable or whether this is one where you
9 would have to move off your price point?

10 A We have not.

11 Q Not at all?

12 A We cannot because there is no place for
13 vertical construction at Redmond 74. We cannot
14 obtain financing without the subordination of Rainier
15 Capital, so we have no option to do that at Redmond
16 74.

17 At Little Boat North we have existing
18 inventory that we are trying to sell through and we
19 prefer to sell through that inventory before we try
20 this.

21 Q All right.

22 You haven't sold any inventory in Little Boat
23 North in how long?

24 A Probably two months, it could be.

25 Q Have you adjusted your price points for

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1 Basically, an update. People were talking to
2 concepts that were under discussion, possible
3 strategies to sell the projects.

4 Q All right.

5 And which projects were you talking about?

6 A Redmond 74, Little Boat North, Jacobson House
7 and Little Duck.

8 Q And then maybe you can just sort of help me
9 out. The first one says "Stanton Northwest."

10 A Yes.

11 Q Who is Stanton Northwest?

12 A Stanton Northwest is an entity owned by
13 Brian Housley, and his wife, I believe, is Sheila.

14 Q And how was Stanton Northwest contacted, if
15 you know?

16 A My recollection is that Stanton Northwest was
17 contacted through an associate of Mr. Baldwin.

18 Q Do you know who the associate was?

19 A Wayne Knowles.

20 Q And who is Wayne Knowles?

21 A Wayne Knowles is a person that's been
22 involved in residential and commercial real estate in
23 the Seattle marketplace for a number of years. He
24 has had prior business dealings with Mr. Baldwin.
25 That's all I know.

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1 Q So is it your understanding that Mr. Baldwin
2 mentioned to Mr. Knowles that he was on the lookout
3 for potential investors and that Mr. Knowles directed
4 him to Mr. Housley?

5 A That would be my assumption, yes.

6 Q And prior to this reference, or this
7 referral, I should say, by Mr. Knowles, do you know
8 whether Mr. Housley or any of his entities had any
9 connection with Mr. Baldwin or any of his entities?

10 THE WITNESS: Can I tell him?

11 MR. KORNFELD: Yes.

12 A I'm not aware of any relationship between
13 Urban Innovations and Stanton Northwest. Mr. Baldwin
14 has stated on a number of occasions that prior to
15 Mr. Knowles making the introduction, he had no
16 relationship with Brian Housley.

17 Q Okay.

18 And did you have any relationship with Brian
19 Housley?

20 A No.

21 Q Ever heard of him before Mr. Knowles referred
22 to him?

23 A No.

24 Q All right.

25 Were you privy to any of the discussions

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1 between Mr. Baldwin and Mr. Housley?

2 A Yes.

3 Q And what was discussed?

4 A The acquisition of Little Boat North,
5 Jacobson House and Redmond 74 by Mr. Housley or one
6 of his entities.

7 Q And were there discussions about the terms on
8 which that might take place?

9 A Yes.

10 Q Tell me about those.

11 A Basically, it was a buyout, is how we started
12 the discussions. We wanted Mr. Housley to purchase
13 all three entities. Mr. Housley was going to go out
14 and arrange the debt financing for himself and
15 acquire the properties.

16 Q And is that the way it turned out?

17 A No.

18 Q Why not?

19 A A number of factors played into it.
20 Mr. Housley's financial capability to acquire all
21 three projects, his ability to find the financing, he
22 was looking for subordinated debt to help him buy the
23 projects, and eventually we came to terms that worked
24 for both parties.

25 Q So are you saying that he had insufficient

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1 credit capacity himself to do the deal through the
2 bank on his own?

3 MR. KORNFELD: I'm going to object to
4 the extent it calls for speculation. Daryl may or
5 may not know, obviously, his credit situation.

6 Q I'm sorry, I'm not asking you to speculate,
7 but I thought you told me that one of the factors was
8 that Mr. Stanton didn't have the financial oomph to
9 do the deal on his own on the terms that you would
10 have originally liked him to.

11 A I believe the value of all three of these
12 projects was 35- to \$45 million of debt. When
13 Mr. Stanton saw that number, he decided we should
14 renegotiate something else to make this work.

15 Q So where did it go from then, then?

16 A I believe we focused on Redmond 74 to start
17 with. He was looking at acquiring the entire Redmond
18 74 project, which would have contemplated signing up
19 for about a \$24 million bank loan commitment.

20 Q And was that something he would capable of
21 doing, according to him?

22 A I believe so, yes.

23 Q And so is that the way the deal went?

24 A That's the way the deal was documented, yes.

25 Q And then what happened?

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1 taken out of the deal, right? They would have been
2 paid off?

3 A I believe so, yes.

4 Q So the proposal currently before the
5 bankruptcy court doesn't have Rainier Capital being
6 paid off, except way down the line, potentially as
7 part of some plan?

8 A I believe they get periodic payments every
9 time units are taken down.

10 Q What are those periodic payments, if you
11 know?

12 A The numbers have changed, but I think
13 currently they are about \$16,000 per unit.

14 Q Is the reason for this bankruptcy that you
15 needed to get Rainier Capital and its loan documents
16 out of the way?

17 A No, the reason for the bankruptcy is to allow
18 us to go forward with the sale of the project.

19 Q You said you couldn't build out the project
20 without the bankruptcy?

21 A No, I said we could not build out the project
22 without obtaining vertical financing on the loans,
23 and Rainier Capital has refused to subordinate the
24 vertical financing.

25 Q Were there alternatives available to you

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1 the marketing name the same as the name of the LLC.

2 Q And did somebody tell Mr. Housley, you know,
3 we want the -- the buyer ought to have that name,
4 Velo, in it?

5 A I believe so.

6 Q Who would that be?

7 A That would have been Mr. Baldwin or myself.

8 Q What do you recall about at that, if it was
9 you?

10 A I probably gave them a marketing brochure or
11 a write-up on it that had the name Velo in it. It
12 could be that simple, or our attorneys may have
13 contacted Mr. Johnston when they documented the name.

14 Q Have your attorneys -- and I'm not asking
15 about any communications with your attorneys, I am
16 asking whether your attorneys have prepared any
17 documents related to the formation of Velo Redmond,
18 LLC.

19 A I have no knowledge of that.

20 Q Take a look at the second page.

21 A (Complies.)

22 Q The third bullet point confirms that under
23 this proposal, Rainier Capital Group would be paid
24 2.9 million, right?

25 A Yes.

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1 this risk to develop the projects to obtain the
2 management fee and not have the profit potential in
3 the real estate, doesn't excite anybody that much.

4 Q So why did they do it?

5 A Do what?

6 Q Why did they position themselves to continue
7 to receive development fees and construction fees
8 without keeping any of the upside for developing?

9 MR. KORNFELD: I'm assuming you are
10 talking about the Velo deal that's on the table?

11 MR. WEATHERHEAD: Yes.

12 A Well, as we have discussed previously, the
13 Velo deal is stalled at this point. We don't have
14 opportunities to start vertical on the project,
15 because Rainier Capital has stated that they will not
16 fully subordinate to HomeStreet loans -- HomeStreet
17 Bank loans. This real estate market, you cannot
18 obtain external financing for construction of the
19 project unless that bank is also on the land portion,
20 it's just simply not happening. You can read any
21 newspaper you want to and you will see how banks are
22 retrenching and trying to dump their real estate.

23 Our only choice for financing for the Velo
24 deal is either through a total outside source and
25 sale of the project or through HomeStreet Bank.

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1 name of the firm.

2 Q Where is he officed?

3 A Mercer Island.

4 MR. WEATHERHEAD: If you will give me
5 about five minutes to chat here. I think we are
6 done.

7 (A brief recess.)

8 Q Last night we were furnished with a CD-ROM
9 with about 35,000 pages of documents on it. Are you
10 familiar with what I'm talking about?

11 A Yeah.

12 MR. KORNFELD: I'll tell you that it's
13 47,000.

14 MR. WEATHERHEAD: I only got to 35,000
15 before I got sleepy.

16 Q Can you tell me what's on that disk?

17 A I believe there are two major files on it.
18 One is for Redmond, one is for Little Boat North.
19 There were subfiles, one having to do with the
20 acquisition of the property, (inaudible) packages.
21 There could be purchase and sale agreements on that,
22 things of that nature.

23 The other side is a financial drive copied
24 off of our system. It has all the pro formas that
25 have ever been created for the project, whether they

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Robert F. Pascal

Page 1

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re)	
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7525 SE 24th STREET, #650)	
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REDMOND 74, INC.)	
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MERCER ISLAND, WA 98040,)	
Tax ID 20-5820789,)	
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Debtor.)	

DEPOSITION UPON ORAL EXAMINATION

OF

ROBERT F. PASCAL

Taken at 1201 Third Avenue

Seattle, Washington

DATE TAKEN: OCTOBER 14, 2008
REPORTED BY: SHERRILYN SMITH, CCR# 2097

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Robert F. Pascal

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1 Q And it's also in bankruptcy?

2 A Yes.

3 Q Prior to bankruptcy were the loans in
4 default?

5 A We had not declared a default. Technically,
6 they may have been in default. Usually, the key is
7 when we declare a default, but we hadn't declared
8 one.

9 Q So it's possible that if you had reviewed the
10 file with an eye toward determining whether there was
11 a default, you might have concluded that there was
12 one, but you made a discretionary decision not to do
13 so?

14 MR. CAHN: Objection. Calls for
15 speculation. Misstates prior testimony.

16 Q You can answer.

17 MR. CAHN: You can answer.

18 A Would you say that again?

19 Q Sure. Had you made a discretionary decision
20 not to declare a default prior to the bankruptcy?

21 A We had not -- we had not made any particular
22 decision regarding a default. It's not my decision
23 to make.

24 Q Whose decision is it?

25 A It would typically be an underwriting

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Robert F. Pascal

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1 talk about that you recall as being issues of
2 importance to the bank, without telling me, you know,
3 I told him that our lawyers said this or our lawyers'
4 judgment about the risk was that?

5 It may not be possible to answer the question
6 the way I posed it, but if you can, that's what I'm
7 asking for.

8 A Our conversations really discussed whether or
9 not there -- you know, legally this was something
10 that would -- that could be done.

11 Q Okay.

12 Did you talk to Mr. Todhunter or anybody else
13 at the bank about developing a Plan B in the event
14 that Rainier proved to be right, that this was not an
15 arm's length transaction?

16 A Well, our original plan was to have The
17 Dwelling Company build this on their own with Rainier
18 Capital as a subordinate lender. That was always the
19 original plan. Because of the fact that Rainier
20 Capital was in a subordinate position, it would not
21 subordinate and would not take payment of their
22 principal and interest. We didn't really see an
23 alternative other than selling the land.

24 Q What caused you to think that Rainier
25 wouldn't accept payment of its principal and

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Robert F. Pascal

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1 interest?

2 A Well, maybe I misspoke. I don't know that
3 we -- we knew that they would not accept payment of
4 principal and interest. I think it was more that
5 there probably was not room in the transaction to pay
6 everybody; that is, without us assuming an equity
7 position.

8 Q Or taking a position for future advances
9 subordinate to Rainier Capital?

10 A Or loaning well outside our normal
11 guidelines.

12 Q Or requiring the founders to step up and put
13 more equity into the program?

14 A If they could pay off Rainier, that would be
15 something that could work, but apparently they were
16 unable to do that.

17 Q Point of fact, didn't you suggest to
18 Mr. Wordstrom --

19 MR. WEATHERHEAD: Did I get that right?

20 MR. KORNFELD: Stromswold.

21 MR. WEATHERHEAD: I knew I said it
22 wrong.

23 Q Did you suggest to Mr. Stromswold that the
24 bank would make an advance to pay off Rainier
25 Capital, leaving Rainier Capital to await the end of

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Robert F. Pascal

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1 A Okay.

2 Q After approval of the June 6, 2008 request,
3 how did it come up that this interest loan and this
4 attorneys fee loans were going to be necessary to
5 permit the founders to go forward?

6 A Well, we had issued our commitments in
7 documents on both loans and requested the
8 subordinations be signed and Rainier Capital refused
9 to sign them.

10 Q And then what?

11 A Well, then the borrower felt that the only
12 alternative was to either go into state court or go
13 into bankruptcy and get a decision as to whether the
14 project can go forward or not.

15 Q More specifically, a decision as to whether
16 Rainier was obliged by its documents to subordinate?

17 A Yes.

18 Q And without involving any discussions you may
19 have had with your counsel, were you told why the
20 option to go to state court was not taken?

21 A I -- I can't really answer that without
22 thinking of what our counsel was telling me.

23 Q Did you talk to Mr. Baldwin about that?

24 A I'm sure I did.

25 Q Do you remember what he said about the

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